

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 09-N-13627-LMA
)	
CYNTHIA B. SILVERSTEIN,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 111294,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

I. Introduction

In this default disciplinary matter, respondent **Cynthia B. Silverstein** is found culpable, by clear and convincing evidence, of failing to comply with California Rules of Court, rule 9.20,¹ as ordered by the California Supreme Court on April 3, 2009, in S170192.

In view of respondent’s misconduct and the evidence in aggravation, the court recommends that respondent be disbarred from the practice of law.

II. Pertinent Procedural History

This proceeding was initiated by the Office of the Chief Trial Counsel of the State Bar of California (State Bar). The Notice of Disciplinary Charges (NDC) was filed and properly served via certified mail, return receipt requested, on respondent at her official membership records address (official address) on September 9, 2009. The mailing was returned by the U.S. Postal service, with the handwritten notation: “Refused 9/11/09.”

¹ All references to rule 9.20 are to the current California Rules of Court.

On motion of the State Bar, respondent's default was entered on November 13, 2009. The order of entry of default was properly mailed to respondent's official membership records address. Respondent was enrolled as an inactive member under Business and Professions Code section 6007, subdivision (e),² on November 16, 2009.

Respondent never filed a response to the NDC. (Rules Proc. of State Bar, rule 103.)

Respondent did not participate in the disciplinary proceedings. The court took this matter under submission on December 7, 2009, following the filing of the State Bar's brief on discipline.

III. Findings of Fact and Conclusions of Law

All factual allegations of the NDC are deemed admitted upon entry of respondent's default unless otherwise ordered by the court based on contrary evidence. (Rules Proc. of State Bar, rule 200(d)(1)(A).)

A. Jurisdiction

Respondent was admitted to the practice of law in California on December 12, 1983, and has been a member of the State Bar since that time.

B. Violation of California Rules of Court, Rule 9.20

On April 3, 2009, in California Supreme Court case No. S170192 (State Bar Court case No. 05-O-00417), the Supreme Court suspended respondent from the practice of law for three years, stayed the execution of the suspension, and actually suspended her for 90 days and until the State Bar Court grants a motion to terminate her actual suspension under rule 205 of the Rules of Procedure of the State Bar. Among other things, the Supreme Court ordered respondent to comply with rule 9.20(a) and (c), within 30 and 40 days, respectively, after the effective date

² All references to sections are to Business and Professions Code, unless otherwise indicated.

of the Supreme Court order. The order became effective 30 days after it was filed, i.e., May 3, 2009. Notice of the Supreme Court order was duly served on respondent.

Rule 9.20(c) mandates that respondent “file with the Clerk of the State Bar Court an affidavit showing that . . . she has fully complied with those provisions of the order entered pursuant to this rule.”

Notice of the order was properly served upon respondent. (Cal. Rules of Court, rule 9.18(b).)

Respondent was to have filed the rule 9.20 affidavit by June 12, 2009, but to date she has not done so and has offered no explanation to this court for her noncompliance. Whether respondent is aware of the requirements of rule 9.20 or of her obligation to comply with those requirements is immaterial. “Willfulness” in the context of rule 9.20 does not require actual knowledge of the provision which is violated. The Supreme Court has disbarred attorneys whose failure to keep their official addresses current prevented them from learning that they had been ordered to comply with rule 9.20. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

Therefore, the State Bar has established by clear and convincing evidence that respondent willfully failed to comply with rule 9.20, as ordered by the Supreme Court in S170192.³

C. Violation of Business and Professions Code Section 6103

Respondent’s failure to comply with rule 9.20 constitutes a violation of section 6103, which requires attorneys to obey court orders and provides that the willful disobedience or violation of such orders constitutes cause for disbarment or suspension.

³ Specifically, rule 9.20(d) provides that a suspended attorney’s willful failure to comply with rule 9.20 constitutes a cause for disbarment or suspension and for revocation of any pending probation. Additionally, such failure may be punished as a contempt or a crime.

IV. Mitigating and Aggravating Circumstances

A. Mitigation

No mitigating evidence was offered or received. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std. 1.2(e).)⁴

B. Aggravation

There are several aggravating factors. (Std. 1.2(b).)

Respondent's prior record of discipline is an aggravating circumstance. (St. 1.2(b)(i).) In the underlying matter, respondent was suspended for three years, stayed, and was actually suspended for 90 days and until the State Bar Court terminates her actual suspension under rule 205 of the Rules of Procedure of the State Bar. Her misconduct included failing to maintain respect due to the courts by not promptly obeying a court order, failing to support the laws of this state by breaching her common law fiduciary duties to a client, and failing to maintain her current office addresses on the official membership records of the State Bar. (Supreme Court case No. 170192, filed April 3, 2009; State Bar Court case No. 05-O-00417.)

Respondent demonstrated indifference toward rectification of or atonement for the consequences of her misconduct by failing to comply with rule 9.20(c), even after the NDC in the instant proceeding was filed. (Std. 1.2(b)(v).)

Respondent's failure to participate in this disciplinary matter prior to the entry of her default is a serious aggravating factor. (Std. 1.2(b)(vi).)

V. Discussion

Respondent's willful failure to comply with rule 9.20(c) is extremely serious misconduct for which disbarment is generally considered the appropriate sanction. (*Bercovich v. State Bar* (1990) 50 Cal.3d 116, 131.) Such failure undermines its prophylactic function in ensuring that

⁴ All further references to standards are to this source.

all concerned parties learn about an attorney's suspension from the practice of law. (*Lydon v. State Bar* (1988) 45 Cal.3d 1181, 1187.) Respondent has demonstrated an unwillingness to comply with the professional obligation and rules of court imposed on California attorneys, although she has been given opportunities to do so.

Therefore, respondent's disbarment is necessary to protect the public, the courts, and the legal community, to maintain high professional standards, and to preserve public confidence in the legal profession. It would undermine the integrity of the disciplinary system and damage public confidence in the legal profession if respondent were not disbarred for her willful disobedience of the Supreme Court order.

VI. Recommendations

A. Discipline

Accordingly, the court recommends that respondent **Cynthia B. Silverstein**, be disbarred from the practice of law in the State of California and that her name be stricken from the roll of attorneys in this state.

B. California Rules of Court, Rule 9.20

It is also recommended that the Supreme Court order respondent to comply with California Rules of Court, rule 9.20, paragraphs (a) and (c), within 30 and 40 days, respectively, of the effective date of its order imposing discipline in this matter.⁵

C. Costs

It is further recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

⁵ Respondent is required to file a rule 9.20(c) affidavit even if she has no clients to notify. (*Powers v. State Bar* (1988) 44 Cal.3d 337, 341.)

VII. Order of Involuntary Inactive Enrollment

It is ordered that respondent be transferred to involuntary inactive enrollment status under section 6007, subdivision (c)(4), and rule 220(c) of the Rules of Procedure of the State Bar. The inactive enrollment will become effective three calendar days after this order is filed.

Dated: March _____, 2010

LUCY ARMENDARIZ
Judge of the State Bar Court